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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,370	03/26/2004	Hideki Sakurai	826.1936	7627

21171 7590 04/19/2007		EXAMINER
STAAS & HALSEY LLP		TRUONG, THANHNGA B
SUITE 700		

ART UNIT	PAPER NUMBER
2135	

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WASHINGTON, DC 20005

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

	Application No.	Applicant(s)
Office Action Summary	10/809,370	SAKURAI ET AL.
	Examiner	Art Unit	
	Thanhnga B. Truong	2135	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>26 March 2004</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-9</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-9</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>26 March 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All   b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>3/26/04;2/28/07</u>..

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____ .

DETAILED ACTION

1.   This action is responsive to the communication filed on March 26, 2004.

Claims 1-9 are pending. At this time, claims 1-9 are rejected.

Information Disclosure Statement

2.   The information disclosure statement (IDS) filed on March 26, 2004 and

February 20, 2007.   The submission is in compliance with the provisions of 37

CFR 1.97. Accordingly, the information disclosure statements are being considered by

the examiner.

Claim Objections

3.   Claims 1 and 4 are objected to because of the following informalities:

· a.   *Referring to claim 1:*

The applicant recites an apparatus in the preamble whereas the

body of claim shows the steps of a method of the claim.   Appropriate correction is

required.

b.   *Referring to claim 4:*

It is unclear to the examiner what applicant is trying to claim here.

It appears that applicant has a run-on sentence that makes the claim is not clear to

understand. Appropriate correction is required.

Claim Rejections - 35 USC § 101

4.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition
> of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

5.   Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

a.   *Referring to claims 1-9:*

Claims 1, 2, and 7-9 recite "a apparatus, a computer readable

recording medium, a carrier signal that carries a program, a method, and an apparatus

for applying revision information to software in a system that dynamically assigns

software to a plurality of servers to perform customer services." These claims are clearly

directed toward a software program and they are non-statutory as not being tangibly embodied in a manner so as to be executable. Furthermore, this computer readable medium includes intangible media such as signals, carrier waves, transmissions optical waves, transmission media incapable of being touched or perceived absent the tangible medium through which they are conveyed. Therefore, claims 1, 2, and 7-9 recite a non-statutory subject matter.

Claims 3-6 are depended on claim 2, thus they are rejected with the same rationale applied against claim 2 above.

Claim Rejections - 35 USC § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7.   Claims 1-4, 6-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Singh et al (US 7,155,462 B1).

    a.   *Referring to claim 1:*

        i.   Singh teaches an apparatus for applying revision information to software in a system that dynamically assigns software to a plurality of servers to perform customer services (see Figure 2A), comprising:

            (1)   calculating an index to which there have been integrated a newness of a software that a customer is using and a security level of the software using information provided when revision information is issued **(see Figure 2A and column 2, lines 25-58 of Singh)**;

            (2)   storing restricting conditions for the index that are designated by the customer **(column 2, lines 59-64 of Singh)**; and

(3)   checking whether the calculated index satisfies the restricting conditions, and, if the calculated index does not satisfy the restricting conditions, applying the revision information to the software that the customer is using to update the software **(column 2, line 64 through column 3, line 21 of Singh).**

b.   *Referring to claim 2:*

i.   This claim consist a computer readable recording medium recording a program for a computer to apply revision information to software in a system that dynamically assigns software to a plurality of servers to perform customer services to implement claim 1, thus it is rejected with the same rationale applied against claim 1 above.

c.   *Referring to claim 3:*

i.   Singh further teaches:

(1)   when in the program further makes the computer execute the processes of preparing a same software configuration as that of a target server in which the software the customer is using is operating in the unused server that has not been assigned to any customer yet, applying the revision information to the software that the customer is using in the unused server, and assigning the unused server instead of the target server to the customer in order to update the software **(column 1, line 62 through column 2, line 11 of Singh).**

d.   *Referring to claims 4, 6:*

i.   These claims have limitations that is similar to those of claim 3, thus they are rejected with the same rationale applied against claim 3 above.

e.   *Referring to claim 7:*

i.   This claim consist a carrier signal that carries a program for a computer to apply revision information to software in a system that dynamically assigns software to a plurality of servers to perform customer services to implement claim 1, thus it is rejected with the same rationale applied against claim 1 above.

f.   *Referring to claim 8:*

i.   This claim consist a method for applying in which revision information to software by a computer in a system that dynamically assigns software to

a plurality of servers to implement claim 1, thus it is rejected with the same rationale applied against claim 1 above.

       g.   *Referring to claim 9:*

       i.   This claim has limitations that is similar to those of claim 1, thus it is rejected with the same rationale applied against claim 1 above.

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9.   Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Singh et al (US 7,155,462 B1), and further in view of Matsumoto et al (US 6,647,125 B2).

       a.   *Referring to claim 5:*

       i.   Singh further teaches:

       (1)   wherein the program makes the computer execute the processes of extracting a date and a degree of importance of the revision information from information provided when the revision information is issued and calculating the index using the extracted information **(column 10, lines 31-47 of Singh).**

       ii.   Although Singh teaches the database maintains a table that records client's information as shown in column 10, lines 31-47 of Singh), Singh is silent on the capability of recording the date so as to be retrieved and/or extracted by the program. On the other hand, Matsumoto teaches this limitation as shown in **(column 3, lines 14-21 of Matsumoto).**

       iii.   It would have been obvious to a person having ordinary skill in the art at the time the invention was made to:

       (1)   have modified the invention of Singh (if indeed is not inherently) with the teaching of Matsumoto since the updating and migration processes

described above are quite error prone, and it is generally not a simple task to return to the last good configuration of software and client data if an error in a newer version of the software is discovered **(column 1, lines 55-59 of Singh).**

        iv.   The ordinary skilled person would have been motivated to:

        (1)   have modified the invention of Singh (if indeed is not inherently) with the teaching of Matsumoto for easy tracking the old and new version of the software in case of error occurring during software testing.

Conclusion

10.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

        a.   Ziebell (US 6,385,768 B1) discloses a method in a computer system capable of executing a version control program, wherein the method operates within the version control program for incorporating changes to software releases. (see abstract).

        Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanhnga (Tanya) Truong whose telephone number is 571-272-3858.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached at 571-272-3859. The fax and phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

        Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2100.

TBT

April 16, 2007